

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

FILED  
01 MAY 30 PM 4:04  
U.S. DISTRICT COURT  
N.D. OF ALABAMA

BARBARA BAMBERG, )  
PLAINTIFF, ) CIVIL ACTION NUMBER:  
VS. ) CV-01-N-1367-S  
CISCO SYSTEMS, INC., et al., )  
DEFENDANTS. )

**CISCO'S MOTION TO DISMISS PURSUANT TO FRCP 12(b)(6); ANSWER  
AND AFFIRMATIVE DEFENSES; AND COUNTERCLAIM**

COMES NOW Defendant Commercial Industries Service Company, Inc. (hereinafter referred to as CISCO) and files this Answer and Affirmative Defenses. In support thereof, CISCO would respectfully show the Court as follows:

I. FIRST DEFENSE

**MOTION TO DISMISS**

Defendant moves this Court, pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the Original Complaint, with Prejudice, as to CISCO on the following grounds:

1. Plaintiff has brought claims against CISCO relating to the collection of an outstanding commercial debt that Plaintiff incurred when she sought and obtained credit from Spring Arbor for the purpose of purchasing books for her place of business, Angels Among Us.



2. The state and federal statutes that normally govern the collection of consumer debts are not applicable here as Plaintiff's underlying debt was for a commercial account.
3. The Complaint fails to allege any facts which, if proved, would entitle the plaintiff to relief against CISCO.

II. SECOND DEFENSE

**ANSWER**

And now, without waiving and expressly reserving the aforesaid First Defense and all other affirmative defenses stated elsewhere in this answer, CISCO responds to similarly numbered paragraphs in the Complaint, as follows:

1. CISCO lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1, and therefore denies them.
2. CISCO admits that it conducts business within the State of Alabama.
3. CISCO lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1, and therefore denies them.

**COUNT ONE - INVASION OF PRIVACY**

4. CISCO restates and incorporates its responses to paragraphs 1 through 3 as though fully stated herein.
5. CISCO admits that it attempted to contact the Plaintiff via written correspondence and by leaving messages on an answering machine at the business phone number that was indicated on the Plaintiff's commercial credit

application. As to the remaining allegations of paragraph 5, CISCO denies them.

6. CISCO denies the allegations of paragraph 6.
7. CISCO specifically denies that the Plaintiff ever had any conversations with any of its employees. CISCO also denies the remaining allegations of paragraph 7.
8. CISCO denies the allegations of paragraph 8.

#### COUNT TWO - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

9. CISCO restates and incorporates its responses to paragraphs 1 through 9 as though fully stated herein.
10. CISCO denies the allegations of paragraph 10.
11. CISCO denies the allegations of paragraph 11.
12. CISCO denies the allegations of paragraph 12.

#### III. AFFIRMATIVE DEFENSES

13. Plaintiff's Complaint fails to state a claim against CISCO upon which relief can be granted.
14. Plaintiff's alleged injuries and damages, if any, were directly and proximately caused by the acts or omissions of third persons over whom CISCO had neither control nor responsibility and/or resulted from an intervening proximate cause.

15. At all pertinent times, CISCO acted in good faith and without malice or intent to injure Plaintiff.
16. While CISCO does not admit liability on its own part or on the part of any other defendant to this action, if any defendant is found liable in any respect relevant to this case and one or more of the other defendants are also found to be liable, then CISCO pleads the applicable provisions of the Alabama Litigation Accountability Act with respect to the appropriate apportionment of liability.
17. Plaintiff has failed to mitigate her damages by failing to pay the debt owed by her to Defendant and/or Defendant's creditor/client.
18. The sole proximate cause or proximate contributing cause of the injuries and damages claimed by the plaintiff is her own negligence.
19. CISCO reserves the right to assert additional affirmative defenses.

#### **IV. CISCO'S COUNTERCLAIM**

20. Defendant/Counter Plaintiff CISCO hereby claims that Plaintiff/Counter Defendant Barbara Barnberg has breached her credit agreement with Spring Arbor, a copy of which is attached and incorporated herein by reference as Exhibit A. As a result of Ms. Barnberg failing to comply with the terms of this credit agreement, Spring Arbor retained the professional services of CISCO to collect the outstanding debt due on this account.


21. Under this agreement, Ms. Barnberg promised to pay for the goods, services, wares and/or merchandise so provided, but Ms. Barnberg has failed and refused and continues to fail and refuse to pay the amount due and owing on the account to CISCO in the sum of \$1,762.53, together with collection and/or attorneys' fees and expenses incurred in the collection of this account as permitted under the agreement.
22. As a direct result of Ms. Barnberg's failure to pay the amount due and owing to CISCO and/or its creditor/client, CISCO has been required to employ the attorneys of Daw & Ray, P.C., as its attorneys, and has agreed to pay its attorneys a reasonable attorneys' fee for legal services rendered, and to be rendered in this cause. Therefore, CISCO seeks recovery of all their attorneys' fees.

**V. DEMAND FOR JURY TRIAL**

23. Defendant/Counter Plaintiff hereby demands a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Defendant/Counter Plaintiff Commercial Industries Service Company, Inc. ("CISCO") requests that this matter be set for jury trial and that upon trial, Plaintiff/Counter Defendant take nothing on their claim and that Defendant/Counter Plaintiff recover all of its damages, attorneys' fees, costs of court, and such other and further relief to which they may be justly entitled.

Respectfully submitted,

  
\_\_\_\_\_  
H.L. Ferguson, Jr. HLF004  
Stacy A. Linn LIN028  
Attorneys for Defendant, CISCO, Inc.

OF COUNSEL:

FERGUSON, FROST & DODSON, LLP  
Post Office Box 530190  
Birmingham, Alabama 35253-0190  
205-879-8722 - phone  
205-879-8831 - fax

and

Keith Wier  
DAW & RAY, P.C.  
Coastal Banc Plaza  
5718 Westheimer, Suite 1750  
Houston, Texas 77057  
713-266-3121 - phone  
713-266-3188 - fax

**CERTIFICATE OF SERVICE**

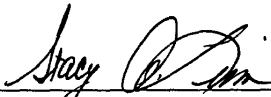
This is to certify that on this the 30<sup>th</sup> day of May, 2001, a copy of the foregoing document has been served upon the following person by the following method:

X mailing the same by 1<sup>st</sup> class United States mail, properly addressed  
and postage pre-paid

       hand delivery

       via facsimile

Ms. Penny D. Hays  
Alabama Injury Lawyers, P.C.  
2204 Lakeshore Dr., Suite 200  
Birmingham, AL 35209

  
\_\_\_\_\_  
Of Counsel

0-3-011 4:44PM:G1SCD

713 4812432

8 26/ 27

FROM Library

2859266

11-22-99 12:17PM TO

52136513

05 F.12

**Spring Arbor**

One Ingram Boulevard - P.O. Box 3804 - La Vergne, TN 37084-1804

395-7434

Telephone: (800) 395-4599  
FAX (615) 213-6513

## SPRING ARBOR TRADE ACCOUNT APPLICATION

Please print or type all information to expedite the evaluation of your application. Incomplete forms will be resubmitted. A trade application must be on file with Spring Arbor prior to, or upon receipt of, your first order. An account number and a reasonable credit limit will be given upon approval of your application. Inclusion of a financial statement with this application will expedite setting up your account; any such statement will be kept strictly confidential. We cannot process orders without an account number.

20133570-A

<b>Bill To:</b>	<b>Ship To:</b>
Business Name <u>Angels Among Us</u>	Business Name <u>Angels Among Us</u>
Street or P.O. Box <u>345 Walnut St</u>	Street Address <u>345 Walnut St</u>
City, State, Zip <u>Centerville, OH</u>	City, State, Zip <u>Centerville, OH</u>
Phone <u>(606) 926-7100</u>	Phone <u>(606) 926-7100</u>
Fax <u>?</u>	Fax <u>?</u>
E-mail <u>?</u>	E-mail <u>?</u>
Business Name Listed With Directory Authorities <u>Angels Among Us</u>	

<input checked="" type="checkbox"/> Business District	<input type="checkbox"/> Residential Area	Do you own the building? <u>Renting</u>
<input checked="" type="checkbox"/> Shopping Center	<input type="checkbox"/> In Church	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No, owner's name <u>Jack Salaks</u>
<input type="checkbox"/> Warehouse	<input type="checkbox"/> Other	Address <u>1001 1/2 N. 1st St</u>
Phone <u>203 346-7100</u>		

(Check only one)			
<input type="checkbox"/> Evangelical Christian	<input type="checkbox"/> Seminary/College Prep	<input type="checkbox"/> Gospel Music	<input type="checkbox"/> Distributor
<input type="checkbox"/> Catholic/Liturgical	<input type="checkbox"/> Camp/Retreat	<input type="checkbox"/> Religious Music	<input type="checkbox"/> Director
<input type="checkbox"/> Lutheran	<input type="checkbox"/> City/Hospital	<input type="checkbox"/> Video Store	<input type="checkbox"/> Library
<input type="checkbox"/> Other			

<input checked="" type="checkbox"/> Sole Proprietorship	
<input type="checkbox"/> Corporation	When and Where Incorporated <u>11-22-99</u>
<input type="checkbox"/> Partnership (all names signed)	
<input type="checkbox"/> Limited Liability Company (LLC)	
<input type="checkbox"/> Other	

(Check only one; if none, check "Other")	
<input type="checkbox"/> New Release ONLY	
<input type="checkbox"/> All Releases	
<input type="checkbox"/> My Selection	

(Check only those you want)	
<input type="checkbox"/> Books	<input type="checkbox"/> Music
<input type="checkbox"/> Church Resources	<input type="checkbox"/> Video
<input type="checkbox"/> Gifts	<input type="checkbox"/> Home Schooling
<input type="checkbox"/> Music	<input type="checkbox"/> Sewing Supplies

Exhibit A



FROM Library 2853284 11-22-99 12:18PM TO 15213515 P. 2/2

Complete Information on All Legal Owners Is Required (use attachment, if necessary)

Name (1) Barbara Bamberg  
Title Manager/Owner  
Street 50 Circlewood Dr  
City, State, Zip East, AL 35041  
Home phone (205) 926-1570  
Serial Number 517-98-1639  
Do you own (or have you owned) any other business(es) ☐ No ☐ Yes, detail  
Business Name \_\_\_\_\_  
Address \_\_\_\_\_  
City/State/Zip \_\_\_\_\_ Home Phone ( ) \_\_\_\_\_

To establish a credit line, please complete the following:  
Square footage of retail store 20 X 120 sq. ft.  
Retail sales Last fiscal year \$ not applicable  
Approximate inventory at cost \$ 5,000  
Trade accounts payable \$ not applicable  
Anticipated purchases per year from Spring Arbor \$ 8,000  
Is this store your sole source of income ☐ Yes ☒ No If no, explain my husband has another job  
Have you, or this corporation, ever filed bankruptcy? ☐ Yes ☒ No If yes, explain \_\_\_\_\_  
Have you ever had a Spring Arbor account before? ☐ No ☒ Yes, Account Number \_\_\_\_\_  
Retail Sales This Month will not be reported the Last Summer Month (applied for)  
Total hours you are (or plan to be) open per week 160 Date store opened (or expect to) Dec. 1, 1999

Business References (wholesalers and suppliers preferred). Please provide three references. (No business references available)  
Firm Name Procc. Enterprises, Inc.  
Address 1165 Hartzel Ave. Suite 102  
City, State, Zip Chickasaw, AL 36019  
Home phone 205 926-1165

Bank First United Security Bank Account # 41198444 Loan Account # \_\_\_\_\_  
Address 129 Court Sq. W.  
City, State, Zip Chickasaw, AL 36019

Please provide account numbers if you do business with any of the following:  
Business Name no acct # City/State no acct # Business Address no acct #  
Mandy no acct # N. State/Zip no acct # Other no acct #  
Trade no acct # Import no acct #

I agree to abide by Spring Arbor's terms and policies, as outlined in the Information and Policies brochure, for purchase of available product. I understand that items on invoice for credit service may not. I agree to pay within 15 days of invoice of 1.5 percent per month on the past due portion of my account. Seller reserves the right to withhold shipment of orders if my account is past due. I will also be responsible for any and all collection and/or attorney's fees and expenses incurred in collecting on my account. Permission is hereby granted to collect credit information from all trade and personal references, including my bank. (All legal owners must sign the Trade Account Application.)  
Signature Barbara Bamberg Title Manager/Owner Date 11/23/99  
Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

BP# 429798 Complete and mail/fax this form to:  
c/Discounts Car System, Inc., 1121 L. McKee, TN 37066-1946 or Fax (615) 213-4515

05/30/01 WED 11:59 FAX 713

3188

DAW &amp; RAY

004

MAY-09-01 WED 08:51 AM NORTHLAND INS.

FAX NO. 651 688 4170

P. 05/30

E-3-0-1 4:44PM CISC0

1713 4612432

# 22/ 27

CISCO

14:21:50 06 Feb 2001

CLIENT# 13642 SPRING ARBOR		--OWING--		--RECEIVED--		ASSIGNED AMOUNTS	
ACCOUNT# 240165		AGN/AMT 1,762.53		0.00		PRINCIPAL 1,762.53	
NAME ANGEL/ AMONG US		INT 0.00		0.00		ASGN INT 0.00	
NAME2 BARBARA BAMBERG/ OWNER		CANCELLED 0.00		0.00		COMM FEES 0.00	
ADDRESS 173 MONTEVALLO RD		ATTORNEY 0.00		0.00		AMISC1 0.00	
ADDRESS2 COURT 0.00		0.00		0.00		AMISC2 0.00	
CITY CENTREVILLE		MISC 286.66		0.00		AMISC3 0.00	
ST/ZIP AL 39042-2221		TOTAL*** 2,049.19		0.00		AMISC4 0.00	
PHONE		NET U/JMP**		2,049.19		AMISC5 0.00	
NOTE LNS 57		STATUS: PWD COMM AGJ		0.00		AMISC6 0.00	
DESK/UNIT 100		-- DATE --		0.00		AMISC7 0.00	
DOB		ASSIGNED 10-17-00		0.00		AMISC8 0.00	
SSN		LAST CHG		0.00		AMISC9 0.00	
DRL		LAST PAY		0.00			
CLIENT REF# #2003570		LAST ACT 02-06-01		0.00		MISCELLANEOUS AMOUNTS	
FWD-CLIENT		CL LC/LP		0.00		--OWING--	
INT RATE(D) .00		INTR EFF 10-17-00		0.00		--RECEIVED--	
PACKET#				0.00		MISC 286.66	
--- SPECIAL FIELDS ---				0.00		OVERPMT 0.00	
PATIENT		INT REV		0.00		MISC1 0.00	
SLPVR		S.F. REV		0.00		MISC2 0.00	
COMM REV		MISC REV		0.00		MISC3 0.00	
				0.00		MISC4 0.00	
				0.00		MISC5 0.00	
				0.00		MISC6 0.00	
				0.00		MISC7 0.00	

--- TICKLER FILE ---

- (1) LAST ACTION DT (M) 02-06-01 Y (6) NEXT STEP  
 (2) COLLECTOR ACTION (?) (7) FOLLOWUP PRIO (1-10)  
 (3) TIME TO WORK (8) PROMISED PNT DATE  
 (4) DATE WORK AGAIN (9) IMP NOTE LINES  
 (5) PROMISED PNT AMT 0.00

--- NOTES ---

- (001) 14:11 10-17-00 STATEMENTS X |LW  
 (002) 14:11 10-17-00 CREDIT APP X |LW  
 \* (003) 14:17 10-17-00 INPUT BY LW  
 \* (004) 14:50 10-17-00 TC=23 286.66 \*MS-A |LW  
 \* (005) 16:29 10-17-00 SMT NYC ACK  
 (006) 11:27 10-19-00 RECVD NGW R12 WB/LUR  
 \* (007) 11:27 10-19-00 DSTG:ACT |LW  
 (008) 11:27 10-19-00 LHOR WB/LUR  
 (009) 14:19 10-19-00 LORI CALLED SO GOT AN NSF CK BACK WB/KT  
 (010) FOR 150 SO ADD THAT PLUS NSF CHG  
 (011) FOR 20 MSG TO SA  
 \* (012) 16:30 10-19-00 SMT NYC D1  
 \* (013) 14:51 10-20-00 TC=3 170.00 \*AP-A |3A  
 (014) 11:24 10-30-00 REC TODAY |CLM  
 (015) 11:56 10-30-00 PH FOR LHOR FOR BARBERA BAMBERG |CLM  
 (016) 11:56 10-30-00 FILE SHWS SMT IS PRINCIPAL |CLM  
 \* (017) 13:46 10-30-00 SMT NYC D2  
 (018) 08:24 11-01-00 LHOR |CLM  
 \* (019) 12:34 11-02-00 ADDR:813 UALNUT |NLI  
 \* (020) 12:34 11-02-00 ZIP:35208 |NLI  
 (021) 13:53 11-09-00 PH FOR LHOR |CLM  
 \* (022) 13:56 11-09-00 RFR LTR# C123 DNT SCREENING CALLS |CLM  
 \* (023) 16:07 11-09-00 SMT NYC D3  
 \* (024) 08:29 11-10-00 SMT LTR C123

MAY-09-01 WED 08:51 AM N. H. LAND INS.

FAX NO. 651 888 4170

P. 06/30

E- 3-01: 4:44PM; GIBCO INC.

1718 4812432

# 23/ 27

--- NOTES --- FOR ACCOUNT 220168 (CONTINUED)

- (025) 09:31 11-14-00 PH POE LMOB |CLM
- (026) 16:25 11-27-00 LMOB |CLM
- \* (027) 16:25 11-27-00 REE LTR# 020 GOING TO ATTORNEY |CLM
- \* (028) 08:02 11-28-00 SNT LTR 020
- (029) 16:03 12-05-00 LMOB |CLM
- (030) 16:03 12-05-00 REFER TO TLM |CLM
- \* (031) 16:03 12-05-00 OSTB:DKP |CLM
- (032) 08:59 12-06-00 GAVE FILE TO KT WB/SF
- \* (033) 04:59 12-06-00 OSTB:RTH |SF
- \* (034) 14:59 12-07-00 REQ LTR# 042 ATTY 10 DAY DEMAND |SL
- \* (035) 15:01 12-07-00 REQ LTR# 097J TYPE IN LETTER |SL
- (036) 15:01 12-07-00 WC NO RESPONSE, FINAL NTC THEN TO WB/SL
- (037) ATTY
- \* (038) 15:01 12-07-00 OOSK:13 |SL
- \* (039) 15:01 12-07-00 OSTB:AKT |SL
- \* (040) 09:35 12-11-00 SNT LTR 042
- \* (041) 10:18 12-11-00 SNT LTR 097J
- (042) 12:33 12-13-00 LMYC ON REC. WB/SG
- (043) 17:29 12-19-00 PHN RANG LONG TIME THN FAST BUSY. WB/SG
- (044) 16:55 01-03-01 WILL CALL THIS ACCT IN MORN. KEEF WB/SG
- (045) GETTING TO IT LATE.
- (046) 10:56 01-09-01 PHN 4659 TEMP DISC. WB/SG
- (047) 08:51 01-23-01 PHND 4659, PHN IS COMPLETELY WB/SG
- (048) DISC.RTH.
- \* (049) 08:51 01-23-01 OSTB:DKP |SG
- (050) 08:49 01-24-01 GAVE FILE TO KT WB/SF
- \* (051) 08:49 01-24-01 OSTB:RTH |SF
- \* (052) 10:02 02-06-01 OPHW:205-924-4659 |SL
- \* (053) 10:02 02-06-01 REQ LTR# CB9 ATTY REQ ADOL TIME |SL
- \* (054) 10:02 02-06-01 OOSK:55C |SL
- \* (055) 10:02 02-06-01 OSTB:AKT |SL
- \* (056) 14:21 02-06-01 REQ LTR# BOND LTR TO ATTY TO BOND |MKU
- \* (057) 16:21 02-06-01 OOSK:058 |MKU

P. 07/30

U 24/ 27

INGRAM BOOK CO 107 SPRING ARBOR

**CAIO** i

MAY-09-01 WED 08:52 AM NORTHLAND INS.

FAX NO. 651 888 4170

P. 08/30

5- 2-01: 4144PM: CISCO

1713 4012432

\* 23/ 27

TERESA H. LINDER

INGRAM BOOK CO. SPRING ARBOR

AMERICAN SOFTWARE, INC.

A/R INQUIRY - OPEN ITEM DETAIL 10/06/00 221140

CUSTOMER: 2081970

SUPPLY :

CURN: USD PAGE: 2

ANGELS AMONG US

CRED RESP: 16

COMP: DIV:

CENTREVILLE AL

CONSOL NO:

TYP: AGE: STAT: SHOW: PO

SEQ: RPTD

START:

ACCT BALANCE O/I CMT

FUTURE

CURRENT

PAST DUE

1,592.53

19

150.00-

62.67

1,673.86

S	TRN	REF NUMBER	ITM.DT	DUE DT	AMOUNT	ST DL	A DAYS	PURCHASE ORDER
?	RTM	28180384	032400	043000	176.72	P7	158	021800
?	RTM	28311726	033000	053000	39.57	P6	128	011100
?	CMW	29001768	042600	063000	310.00	P5	97	
?	RTM	29262851	050500	063000	21.84	P5	97	01041229
?	RTM	29810856	060100	073000	51.52	P4	67	053000
?	LIC	IC0048568	081800	081800	68.67	C	48	
?	CDC	0001102	092000	092000	150.00-	P2	15	

END OF PAGING DATA

3=SUM 5=CI SUM 7=PAY SUM 8=PAY DET 9=AGE 13=SEL 15=CR SUM

END;